

*Sir Cesar Wood alias Cranmer, his C A S E.*

*Sir Cesar Wood alias Cranmer, Appellant,*

AGAINST

*Charles Duke of Southampton, Respondent,*

May 22 and 23, 1671.



Why Three Successive Guardians if Sir Henry Wood intended a present Marriage of his Daughter.

If the Marriage had been according to the Settlement the Profits would have amounted to more than 25000*l.*

These Provisions for the Duke to have 20000*l.* in case of any disappointment by the death of Mary or otherwise, shews it was not only treated but agreed that the Marriage should not be till after Mary's Age of 16.

The precedent Copulative Condition.

May 24, 1671.

Note, Sir Henry says he has appointed the time and manner of the Marriage. In Default of Performance whereof or in default of such Marriage or Issue, the Trust then to be as he should appoint.

If it was intended that Mary and the Duke should take an Estate for Life by the Settlement by their intermarriage only without having Issue, why is this Devise again to Mary for life upon failure of Issue.

IR Henry Wood being Seized in Fee of divers Mannors, and Lands of the Yearly value of 4000*l.* or thereabouts, and having only a Daughter about Six or Seven Years of Age, by Indenture of Lease and Release dated as in the Margent, Reciting that a Treaty had been had by the King's Consent, touching a Marriage to be had between the now Respondent the Duke (then Earl of Southampton) and his said Daughter Mary Wood, in such manner and at such time as therein was after Expressed. And that the King had declared he would settle 2000*l.* per annum in Lands on the Respondent for Life, and after to Mary for Joynture, with Remainder to the Issue male of the Marriage, which Offer Sir Henry accepted.

Sir Henry by that Indenture in Consideration of the said intended Marriage, and of his Majesties agreement to settle 2000*l.* per Ann. in Land as aforesaid, conveyed the said Mannors, &c. (being all his Estate of Inheritance) to the Earl of St. Albans and others and their Heirs; to the Use of Sir Henry for Life, Remainder to the Trustees and their Heirs, upon these Trusts following,

That is to say,

I. In trust to receive and pay out of the Profits 450*l.* a Year to the Lady Chester his Sister, for the Education and Maintenance of his Daughter till she be 12 Years old, then 550*l.* a Year till she be Married or be 17, which shall first happen; And in case the Lady Chester died before that time, the same to be paid to two other Guardians in the Will named successively.

II. In trust to pay the Residue of the Profits to the Earl after Marriage, he first giving Security to the said Trustees to provide Portions and Maintenance for the Daughters of that Marriage equal to the Summ he should receive, and in case there be no Daughters, then the same Monies to remain to the Respondent, his Executors and Administrators. And if the said Mary should die before her Age of 17 Years or Marriage with the Respondent, then in Trust for such Persons and Uses as Sir Henry Wood, by Deed or Will in Writing, should appoint.

And if Mary, after Sir Henry's Death, die before she attain 16, the Respondent then Unmarried to any other Woman; or after and before her Age of 17, the Respondent being then Living and Unmarried to any other; or if Mary before 17 marry any other, the Respondent then Living and Unmarried; or if Mary, having attained her Age of 16 Years, and being Unmarried should by the space of one Year wilfully and obstinately Twice (once Three Months at least after her Age of 16) and again at least Three Months after her first Refusal in the presence of such Three Witnesses as are therein named (which were Three of the Trustees) refuse to Marry the said Respondent, he being then Unmarried and making Addresses to her, then in every or any of the said Cases, the Trustees out of the Profits of the said Estate to raise 20000*l.* to be paid to the Respondent, if then Living and Unmarried.

But if the said intended Marriage shall take effect after Mary's Age of 16 years, and she shall have Issue male by the Respondent, Then for the better Settlement of the Premises upon such Issue male, and for a more ample Provision and Maintenance for the Respondent and Mary his Wife, and the longest Liver of them, the Trustees to stand intrusted for the said Respondent and Mary for and during their Lives and the Life of the Survivor of them, and after their Deaths in Trust for their first Son for Life, Remainder to the first and all the Sons of such first Son in Tail Male, Remainder to all other the Sons of the said Marriage, and the Sons of such Sons in Tail Male, and for default of Issue Male, for the Daughters of that Marriage in general Tail. And for default of such Issue, in trust for such Persons only as Sir Henry by writing or Will in writing should appoint, and in default thereof for the right Heirs of Sir Henry.

Sir Henry Wood at the same time (tho dated the day after the Settlement,) makes his Will, and reciting the same Settlement, and that it was for raising Maintenance for his Daughter Mary during her Minority, or till her Marriage, and for the disposing the Rents and Profits to her and the Respondent, after their Marriage, after her Age of 16, and before her Age of 17, and their Issues Males and Females, and the Heirs of their Bodies issuing; with several Limitations for the time and manner of the said Marriage, or Refusal; and in default of the performance thereof: or in default of such Marriage or Issue, in trust for such Persons and Estates as he should appoint; and in default thereof for him and his Heirs, he declares that the Trusts and Limitations therein should stand, and he confirms the same according to the true meaning thereof, and in case the said Marriage should not take Effect according to the Limitations of the Indenture, or if the said Respondent should dye without Issue by Mary, or if he have Issue by her and that Issue dye without Issue, then he devises the said Mannors to his Daughter Mary for Life. Remainder to her first Son for his Life, and to the first, and all the Sons of such first Son in Tail Male, and in like manner to all her Sons and their Sons, Remainder to the Daughters of Mary in general Tail, Remainder to the Bishop of Lichfield and Coventry for Life, Remainder to his first Son for Life, and to the first, and all the Sons of such first Son in Tail Male, with like Remainder to all other his Sons and their Sons, Remainder to the Lady Chester (since deceased) for Life, Remainder to her first Son for his Life, and to the first, and all the Sons of such first Son in Tail Male, Remainder to Henry his eldest Son (since deceased) for Life, Remainder to the first and other Sons of Charles in Tail Male, Upon condition that Sir Cesar Cranmer shall and do change his Name from Cranmer to Wood, and continue the Name of Wood to him and his Heirs, (which he has done accordingly) and for default of such Issue, To his Sister Elizabeth Webb for her Life, with Remainder to Thomas Webb her eldest Son for Life and all his Sons in Tail Male, with like Remainder to Henry Webb her second Son, and his Sons in Tail Male, with divers other Remainders over, the Remainder to Sir Henry Wood's right Heirs.

Sir Henry Wood dies, his Daughter Mary then an Infant of about Six or Seven Years of Age, and the Respondent then about Eleven. The Duchess of Cleveland, the Mother of the Respondent, soon after Sir Henry Wood's death, took Mary from her Guardian the Lady Chester her Aunt, into her own Possession, and within two Months after Married her to the Earl of Southampton, both within the Age of Consent, and presently after Mary's Age of twelve Years marries them again; these Marriages were without the Consent of the Lady Chester, her Guardian, who was to give her in Marriage, or any other the Trustees appointed by Sir Henry Wood for that purpose being present.

The 2000*l.* a Year in Land was never Settled according to the Marriage Agreement, nor indeed any one of the Conditions performed on the Respondents part, and yet he hath received to the value of about 20000*l.* out of the Personal Estate, and Profits of the Real Estate to his Wifes Death.

November 15, 1680.

Mary lived till 1680, and then died without ever having had any Issue.

The Bishop enjoyed this Estate Nine Years without any pretence of the Duke's.

Upon such the Death of Mary without Issue, the Bishop of Lichfield and Coventry entered into the said Estate, and quietly enjoyed the same for Nine years and more, and the late King Charles the II, the Respondent himself, and those who were privy to the Treaty and Settlement, acquiesced therein as satisfied, that the Respondents Interest in that Estate determined by the Death of Mary without Issue.

His Majesty's Letter dated December 27, 1681. And the Earl of Suffolk's Deposition.

Orders 17 March, 2 Ja. 2.  
12 May, 2 Ja. 2.  
17 May, 2 Ja. 2.  
13 July, 2 Ja. 2.

That the late King Charles was satisfied, the said Estate by the Death of Mary without Issue, did immediately go to the Bishop of Lichfield and Coventry, and that his Entry therein was what ought to be, and therefore he was pleased to direct a Treaty to be made with the Bishop, for the Marriage of one of his Daughters, to Charles Cranmer the Bishops Nephew.

That the Respondent himself, and also the Court acquiesced in the Bishops Title. The Estate (in a Suite in Chancery between the Respondent and the Bishop, Anno 1686. which was Six years after Mary's death,) was for a Contempt of the Bishops Sequestred, and afterwards upon the Bishops satisfying the Contempts, the Sequestration was taken off, and the Bishop let into Possession of the Estate again, and no pretence of Title made thereto by the Respondent.

But in Michaelmas Term Anno 1689, and not before, which was Nine years after the death of Mary, and Eighteen years after the Settlement made (which was prepared and carefully perused by great and eminent Counsel of the Respondents part, who if it had been intended the Respondent should have had an Estate for his Life, tho he had no Issue, would not have used Words of a contrary Importance. The Respondent exhibited his Bill in Chancery, and claimed to have the said Estate for his Life, tho he never had any Issue by the said Mary, and tho there be no Trust declared of the said Estate for him the Respondent, but only on the precedent Condition aforesaid, viz.

The precedent copulative Condition on which the Question depends.

But if the said intended Marriage shall take Effect after Mary's Age of Sixteen Years, and she shall have Issue Male by the Earl, (now Duke of Southampton) then for the better Settlement of the Premises upon the said Issue Male, and for a more ample Provision and Maintenance of the said Earl and Mary his Wife, and the longest liver of them, the Trustees to stand intrusted for the said Earl and Mary, for and during their lives and the life of the Survivor of them, and after their Decease in trust for their first Son, &c.

Which is a plain precedent copulative Condition, and being never performed for want of Issue, no Trust of this Estate could ever arise to the Respondent for his life; and yet by a Construction not consistent with the positive Words of the Settlement, and which may hereafter be of ill president and dangerous consequence to Deeds, Settlements and Assurances: The Court of Chancery hath Decreed the Estate to the Respondent for his Life.

Note, The Respondent (the Duke) by the Settlement was thus provided for,

- I. If the Marriage did not take effect through the Default of the said Mary, either by her refusal of him, or by her marrying another, or by her Death before Sixteen, he was to have 20000*l.* to be paid him out of Sir Henry Woods Estate.
- II. If the Marriage did take effect at the said Mary's Age of Sixteen, tho there were no Issue, the Respondent the Duke was immediately to have the whole Profits of the Estate from the Death of Sir Henry Wood, which to Mary's Age of Sixteen, would and did amount to more than 20000*l.* which he hath had, though nothing was Settled on his part.
- III. But if the marriage did take effect, and the Respondent the Duke had Issue male, then he was also to have an Estate for his own Life, but not otherwise: But by such Construction as before, an Estate for Life in the said Estate is Decreed to him tho he never had Issue.

Therefore the said Appellant hath Appealed from the said Decree to the Right Honorable the Lords Spiritual and Temporal in Parliament Assembled.